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The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Fire Safety Commission

Automatic Sprinkler Appeals Board

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MAURICE M. PILETTE
CHAIRMAN

PAUL DONGA
VICE CHAIR

Docket # 2006-134
13 Victory Street
Adams, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD DECISION

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G½ and Chapter 6, section 201, relative to a determination of the Town of Adams Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building occupied by the Polish National Alliance and owned by the Polish National Alliance of Chicago (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 13 Victory Street, Adams, MA.

B) Procedural History

By written notice dated March 27, 2006 and received by the Appellant on March 28, 2006, the Adams Fire Department issued an Order of Notice to the Appellant informing it about the provisions of a new law, M.G.L c. 148, s. 26G½, requiring the installation of an adequate system of automatic sprinklers in the subject building located at 13 Victory Street, Adams, MA. The Appellant filed an appeal of said order on May 10, 2006. The Board held a hearing relative to this appeal on August 8, 2007, at the Department of Fire Services, Stow, Massachusetts.

Appearing at the hearing was Thomas Matuszak and Paul Richardson, President and Vice President of the Polish National Alliance. Said individuals indicated to the Board that they have the ability and authority to represent the owner of the building, The Polish National Alliance of Chicago. Chief Stephen D. Brown appeared on behalf of the Adams Fire Department.

Present for the Board were: Maurice M. Pilette, Chairman; Boston Fire Department Commissioner, Roderick J. Fraser, Jr.; Chief Thomas Coulombe; Alexander MacLeod; Peter E. Gibbons; Aime DeNault; and George A. Duhamel. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the enforcement action of the Adams Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½?

D) Evidence Received

1. Application for Appeal by Appellant
2. Statement in Support of Appeal
3. Order of Notice of the Adams Fire Department
4. License to Keep and Sell Alcoholic Beverages (expiration 12/31/2006)
5. Permit – Food Service Establishment (expiration 12/31/2006)
6. Common Victualer's License (expiration 12/31/2006)
7. Certificate of Inspection (issued November 2005)
8. Public Entertainment Licenses (pool table/juke box)
9. Five page floor plan of facility
10. PNA Function List
11. Financial Statements (April, Year End 2005, Receipts/Expenses)
12. Interior Pictures of Facility (A-I)
13. Notice of Pre-Hearing Status Conference to Parties
14. Notice of Hearing to Appellant
15. Notice of Hearing to Adams Fire Department
16. Certificate of Inspection (inspected 11/2006 and expiration of 11/2007)

E) Subsidiary Findings of Fact

- 1) By written notice dated March 27, 2006 and received by the Appellant on March 28, 2006, the Adams Fire Department issued an Order to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 13 Victory Street, Adams, MA in accordance with the provisions of M.G.L. c. 148, s. 26G½. This building is occupied by the Polish National Alliance, a private, civic organization.
- 2) The subject building consists of a basement and a ground floor level, which features a ballroom with a stage, a bar area and a game room area. The building also features an attic space.
- 3) In accordance with the most recent Certificate of Inspection, which expires on November 1, 2007, this establishment has an "A-2" use group classification. It has an allowable occupant load of 350 persons for the first floor areas. The prior Certificate of Inspection (expiration date of November 2006) listed the identical use group classification and occupant load.
- 4) The establishment has been issued an entertainment license that allows for live entertainment, and jukeboxes, dancing by patrons and live bands. The Appellant agrees that the establishment is considered a bar, nightclub or dance hall under the provisions of M.G.L. c.148, s. 26G½.

- 5) The ballroom is routinely and regularly used for function activities including: birthday parties, baby showers, weddings, graduation parties, retirement parties and other similar social events. Some of these events feature a DJ and/or live band for dancing or entertainment purposes. Although food is often offered at such events, food may not necessarily be the primary attraction to such events. Additionally, there was testimony indicating that there have been events wherein the attendance was not pre- arranged since entry was allowed by ticket purchase at the door.
- 6) The Appellant testified that the facility also regularly and routinely features live entertainment in the form of live bands, on Friday and Saturday nights. The Appellant further indicated that such entertainment is usually held in the bar/lounge area and, in the past, has included a hypnotist and comedy nights.
- 7) Although several doors separate the ballroom and the lounge areas, there was testimony indicating that there is a “free flow” of patrons and activities between said rooms/areas.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The subject building is considered a public assembly with a capacity of 100 persons or more.
- 2) The provisions of the 2nd paragraph of M.G.L. c. 148, s. 26G1/2, in pertinent part states: “ every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code”. The law was effective as of November 15, 2004.
- 3) In a memorandum dated 1-10-05, this Board issued an interpretive guidance document relative to the provisions of this law, found in c.148, s.26G½. This law was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub fire, which took place in February 2003. In said memorandum, this Board noted that the statute did not contain a definition of the words “nightclub, dance hall, discotheque, bar or similar entertainment purposes”. This Board reviewed the legislative intent and background of the statute and concluded that there were certain characteristics typical of nightclubs, dancehalls and discotheques. The board indicated that such occupancies are characterized, but not limited to, the following factors:
 - a) No theatrical stage accessories other than raised platform;
 - b) Low lighting levels;
 - c) Entertainment by a live band or recorded music generating above-normal sound levels;
 - d) Later-than-average operating hours;
 - e) Tables and seating arranged or positioned so as to create ill defined aisles;
 - f) A specific area designated for dancing;
 - g) Service facilities primarily for alcoholic beverages with limited food service; and

h) High occupant load density.

It was the interpretation of this board that such characteristics are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR, The State Building Code) and that these are the type of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148, s.26G½. It was noted that the list of characteristics was not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination depending upon the unique characteristics of the building at the discretion of the head of the fire department. Some of these particular characteristics, such as entertainment by a live band, recorded music generating above normal sound levels and a specific area designated for dancing, may not necessarily exist in certain establishments that are considered a “bar.” Nevertheless, the provisions of M.G.L. c. 148 s. 26G½, clearly apply to “every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a...**bar**...”.

- 4) Based upon the testimony at the hearing, this building is used for many different types of events. This particular facility, as currently used and designed, is clearly routinely used for “A-2 like” activities” described in this Board’s memorandum dated 1-10-05. Additionally, there are portions of this establishment that are clearly operated as a “bar,” as that word is used in section 26G1/2.
- 5) This establishment, as currently used and designed, is clearly subject to the enhanced automatic sprinkler provisions of M.G.L c. 148, s.26G1/2. The Appellant does not contest this finding and, at the hearing, stipulated to this finding to allow an expedited determination by this Board. However, the Appellant is concerned about the technical nature of and costs associated with the installation of an “adequate system of automatic sprinklers” as required by said statute. The representatives of the fire department expressed a willingness to cooperate with the Appellant and to review technical plans relating to the sprinkler system installation.

G) Decision

Based upon the aforementioned findings, which were acknowledged, uncontested, and stipulated to by the parties, the Board hereby unanimously **affirms** the Order of the Town of Adams Fire Department to require an adequate system of automatic sprinklers in accordance with the provisions of M.G.L. c. 148 § 26G½.

The Board hereby adopts the installation timetable as suggested by the parties. Accordingly, the Appellant shall submit plans to sprinkler the facility to the head of the fire department within sixty (60) days of the issuance of this decision. Installation shall be completed no later than November 15, 2008. The parties are further advised, that issues relating solely to the technical method and manner of system installation may be subsequently appealed to this Board if such appeal is filed within a timely manner in accordance with said section 26G1/2.

H) Vote of the Board

Maurice Pilette, Chairperson	In Favor
Roderick J. Fraser, Jr.	In Favor
Thomas Coulombe	In Favor
Alexander Macleod	In Favor
Peter Gibbons	In Favor
Aime DeNault	In Favor
George Duhamel	In Favor

I) Right of Appeal

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED ,



Maurice Pilette, P.E. Chairman

Dated: August 22, 2007

A COPY OF THIS DECISION AND ORDER WAS FORWARDED VIA CERTIFIED MAIL, RETURN RECEIPT TO:

Thomas Matuszak
The Polish National Alliance Lodge 1365
13 Victory Street
Adams, Massachusetts 01220

Chief Stephen D. Brown
Adams Fire Department
3 Columbia Street
Adams, Massachusetts 01220-1398